

Nos. 26-2269, 26-2279, 26-2280, 26-2401, & 26-2736

**UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

SPECIALTY CARE, INC. *et al.*,

Plaintiffs – Appellants,

v.

HEALTH CARE SERVICE CORPORATION, DOING BUSINESS AS BLUE
CROSS BLUE SHIELD OF NEW MEXICO,

Defendant – Appellee.

(caption continued on inside pages)

On Appeal from the United States District Court for the
Northern District of Illinois

**MOTION OF AMERICAN MEDICAL ASSOCIATION AND ILLINOIS STATE
MEDICAL SOCIETY FOR LEAVE TO FILE BRIEF AS AMICI CURIAE IN
SUPPORT OF PLAINTIFFS-APPELLANTS**

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HEALTH CARE SERVICE CORPORATION, DOING BUSINESS AS BLUE
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Defendant – Appellee.

PHI HEALTH, LLC,

Plaintiff – Appellant,

V.

HEALTH CARE SERVICE CORPORATION, DOING BUSINESS AS BLUE
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Introduction

Pursuant to Fed. R. App. P. 29(a), the American Medical Association (AMA) and the Illinois State Medical Society (ISMS) hereby request leave to submit the attached brief as *amici curiae* in support of Plaintiffs-Appellants and reversal.

Fed. R. App. P. 29(a)(3) requires that a motion for leave state “the movant’s interest” and “the reason why an *amicus* brief is desirable and why the matters asserted are relevant to the disposition of the case.”

This motion was not authored in whole or in part by counsel for any party. No person or entity other than *amici curiae*, their members, or their counsel made a monetary contribution to the preparation or submission of this motion or the attached brief.

I. Interest of the *Amici Curiae*

The American Medical Association is the largest professional association of physicians, residents, and medical students in the United States. Additionally, through state and specialty medical societies and other physician groups seated in its House of Delegates, substantially all physicians, residents, and medical students in the United States are represented in the AMA’s policy-making process. Founded in 1847, the

AMA promotes the art and science of medicine and the betterment of public health, and these remain its core purposes. The AMA's members practice in every medical specialty and in every state.

The Illinois State Medical Society is a non-profit, professional organization that represents and unifies its physician members in their practice of medicine throughout the State of Illinois. Born out of a gathering of 12 physicians and surgeons in 1840, ISMS has grown into the leading advocate for Illinois physicians and patients, representing approximately 9,000 physicians in the State across all specialties and practice areas. ISMS represents the interests of its member physicians, fellows, residents, and medical students, as well as those of patients, and promotes the doctor-patient relationship, the ethical practice of medicine, the betterment of public health, and the delivery of quality, affordable care.

The AMA and ISMS appear on their own behalf and as representatives of the AMA Litigation Center. The Litigation Center is a coalition among the AMA and the medical societies of each state and the District of Columbia. Its purpose is to represent the viewpoint of organized medicine in the courts.

II. The Proposed Amicus Brief is Desirable, and the Matters Asserted are Relevant to the Disposition of the Case and Additive to the Plaintiffs-Appellants' Brief

The Court should grant *amici*'s motion for leave because it is timely under the applicable Federal Rule and because the proposed brief is useful under several of the criteria set forth in cases set forth in this circuit.

First, it is timely because it is filed “no later than 7 days after the principal brief of the party being supported is filed.” Fed. R. App. P. 29(a)(6). It is also filed well before the deadline for the opposing parties' answer brief(s).

Second, the proposed *amicus* brief provides information relating to the context and effect of the No Surprises Act (NSA) not present in the brief of Plaintiffs–Appellants or any other party. In *Prairie Rivers Network v. Dynegy Midwest Generation, LLC*, 976 F.3d 761, 763 (7th Cir. 2020), this Court set forth several illustrative criteria for determining whether a proposed *amicus curiae* brief would “add value

to [the Court's] evaluation of the issues presented on appeal,” and “contribute in clear and distinct ways by, for example:

- Offering a different analytical approach to the legal issues before the court;
- Highlighting factual, historical, or legal nuance glossed over by the parties;
- Explaining the broader regulatory or commercial context in which a question comes to the court;
- Providing practical perspectives on the consequences of potential outcomes;
- Relaying views on legal questions by employing the tools of social science;
- Supplying empirical data informing one or another question implicated by an appeal;
- Conveying instruction on highly technical, scientific, or specialized subjects beyond the ken of most generalist federal judges;

- Identifying how other jurisdictions—cities, states, or even foreign countries—have approached one or another aspect of a legal question or regulatory challenge.”

The proposed *amicus curiae* brief attached to this Motion meets several of those criteria, as it highlights the factual and historical nuance regarding the passage of the NSA and the usage and outcomes of the independent dispute resolution (IDR) process and explains the broader regulatory and commercial context in which the question of the enforceability of IDR awards comes before the Court (including significant legislative history of the NSA and the legal and factual context in which the need for the IDR process arose). The proposed *amicus curiae* brief also supplies empirical data that informs this appeal, including data regarding the usage of the IDR process and how that usage has changed over time, the parties initiating the IDR process, and the outcomes thereof that is not in Plaintiffs-Appellants’ brief.

Amici represents hundreds of thousands of physicians in this Circuit and throughout the country. Unlike any of the party briefs, the proposed *amicus curiae* brief explains how, absent a reversal, the lack

any judicial recourse to enforce awards issued pursuant to the No Surprises Act's IDR process would significantly curtail the ability of out-of-network physician practices to receive payment for the services they provide to their patients. The brief goes on to explain how an affirmance would jeopardize physicians' ability to continue providing that care, and how it would also lead to exactly the consolidation of physician practices and health care facilities that Congress sought to avoid.

The proposed *amicus* brief is relevant to the disposition of this case and additive to the brief of Plaintiffs–Appellants as it provides this Court with important context on the passage of the No Surprises Act. Specifically, the proposed brief explains the bargain struck by Congress in the No Surprises Act wherein it removed what was the traditional route for out-of-network physicians to receive fair payment from health insurers, while at the same time providing a different route of payment that does not put patients in the middle of payment disputes. The proposed brief further outlines some of the potential consequences for the health care system and the independent practice of medicine should one side of that bargain be rendered a nullity.

Accordingly, the *amici* respectfully request that the Court grant leave to file the attached proposed brief.

Respectfully,

Dated: September 16, 2026

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**Certificate of compliance with word limit,
typeface requirements, and type-style requirements**

This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 1,104 words.

This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the typestyle requirements of Fed. R. App. P. 32(a)(6) because this motion has been prepared in 14-point, proportionally spaced Century Schoolbook font.

Dated: September 16, 2026

By: /s/ Livia M. Kiser

Counsel for Proposed *Amici*

Certificate of service

I hereby certify that on September 16, 2026, I caused the foregoing MOTION OF AMERICAN MEDICAL ASSOCIATION AND ILLINOIS STATE MEDICAL SOCIETY to be filed electronically with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: September 16, 2026

By: /s/ Livia M. Kiser

Counsel for Proposed *Amici*

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Interest of *Amici Curiae*

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ethical practice of medicine, the betterment of public health, and the delivery of quality, affordable care.

The AMA and ISMS appear on their own behalf and as representatives of the AMA Litigation Center. The Litigation Center is a coalition among the AMA and the medical societies of each state and the District of Columbia. Its purpose is to represent the viewpoint of organized medicine in the courts.

Amici and their members supported Congress's goal of protecting patients from "surprise billing." For years, they have consistently advocated for a patient-first solution to surprise billing that would shield patients from unexpected medical bills, while enabling fair payment by insurers to physicians and ensuring continued access to care. The AMA supported the compromise set forth in the No Surprises Act (NSA), which both protected patients from surprise medical bills and established an independent dispute resolution process to address physician–payor dispute that would be binding on both parties.¹

¹ See Statement for the Record of the American Medical Association to the U.S. House of Representative Committee on Energy and Commerce Subcommittee on Health Re: No More Surprises: Protecting Patients from Surprise Medical Bills. Available at

Accepting Defendants–Appellees’ argument that the results of the independent-dispute-resolution (IDR) process cannot be enforced in federal court upsets the balance that Congress struck and renders large portions of the NSA a dead letter. *Amici* and their members agree with Plaintiffs that the NSA provides a private right of action to enforce IDR awards. *Amici* submit this brief to emphasize why Defendants–Appellees’ position is also unworkable as a practical matter, as well as to explain the detrimental impact it will have on the ability of physicians to provide their patients with the excellent care they deserve.

Summary of Argument

In many states, prior to the passage of the NSA in 2020, the recourse an out-of-network physician had to ensure fair payment was to “balance bill” patients directly for the unpaid balance of amounts that were properly due and owing from their health plans. For this reason, the AMA has supported proposals to remove patients from the middle of such payment disputes, which would require giving out-of-network physicians a Congressionally created recourse to seek payment directly from health plans. This is what the NSA accomplished.

Congress designed the NSA as a two-sided bargain between health plans, on the one hand, and out-of-network physicians and other health care providers, on the other. With the input of the AMA, Congress removed patients from the middle of out-of-network payment disputes by prohibiting unanticipated balance-billing and substituted a neutral adjudication process between plans and physicians that culminates in a binding decision and a 30-day payment command. The statute’s text is unequivocal: IDR determinations “shall be binding upon the parties,” and payment “shall be made” within 30 days, subject only

to the Federal Arbitration Act’s limited vacatur grounds. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(I)–(II); *id.* § 300gg-111(a)(1)(C)(iv)(III).

What Congress designed presupposes a judicial role to confirm awards and enter judgment when losing parties do not pay. Denying confirmation would nullify one side of the statute’s bargain, result in losses to physicians and a windfall for payors that Congress did not anticipate, and predictably erode access to care in already thin-margin practice environments.

Argument

A. Failure to enforce IDR awards would destroy the two-sided bargain created by Congress and leave physicians without recourse for out-of-network services

1. The NSA gave physicians recourse directly against payors in exchange for removing patients from the middle of payment disputes

Before the NSA, the traditional way that an out-of-network physician who disputed an insurer’s payment could collect the unpaid balance was to pursue payment from the patient, a practice encouraged by insurers known as “balance billing.” The NSA eliminated that route in many circumstances by prohibiting physicians from collecting from patients more than the amounts identified by the payor as the in-

network cost-sharing amount (e.g., copays, deductibles, etc.) and barring physicians from balance-billing for any other amounts. 42 U.S.C. § 300gg-131(a)(1), (b)(1)(A).

But Congress did not intend for physicians to render care without any dependable path to full payment, and the NSA did not leave physicians empty-handed in this respect. Rather, Congress created a process to shift the burden of payment disputes from patients being in the middle, to the plans and physicians resolving these disputes directly through the NSA. Congress also provided a mechanism for such disputes: the independent dispute resolution (IDR) process, wherein the party disputing the payment may, after 30 days of unsuccessful negotiations, submit the dispute to a neutral arbitrator for baseball-style arbitration, which results in a binding and determinate payment amount payable within 30 days of the award's issuance.

That process was not intended to be advisory or optional for the payor: the NSA provides that the arbitrator's selection of one of the two payment proposals "shall be binding upon the parties"; and "the total plan or coverage payment" "shall be made ... not later than 30 days" after the determination. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(I); *id.* § 300gg-

111(a)(1)(C)(iv)(III). The fundamental bargain expressed by Congress in the NSA was thus that physicians would no longer be able to seek payment directly from their patients, and in exchange, they could proceed directly against payors for payment when a dispute persists after 30 days (a reform structure supported by the AMA). The NSA's structure is coherent only if prevailing physicians can enforce the resulting binding obligation when losing plans fail to pay the award within the mandated 30 days.

2. Failure to enforce IDR awards would seriously harm physician practices, particularly independent physician practices

The NSA removed a concrete way that out-of-network physicians previously got paid (balance-billing patients, who in turn could seek payment from their health plans), and replaced it with a new way to get paid: a binding IDR decision followed by a mandatory 30-day payment.

42 U.S.C. § 300gg-131(a)(1), (b)(1)(A); *id.* § 300gg-111(c)(5)(E)(i)(I); *id.* § 300gg-111(a)(1)(C)(iv)(III).

The NSA's reporting requirements reflect Congress's expectation that the IDR process would be heavily utilized and that utilization and outcomes would materially affect physician finances: Under the NSA,

federal agencies are required to publish, quarter by quarter, the number of disputes initiated, the number decided, which side prevailed, whether the determined amounts exceeded the Qualifying Payment Amount², and timing to decision. *Id.* § 300gg-111(c)(5)(E)(v), (vii)–(viii), (7).

Published federal IDR statistics show that out-of-network physicians have relied on this process to seek payment for care they have provided. CMS reports that between April 15, 2022, and March 31, 2023, disputing parties initiated 334,828 disputes through the Federal IDR Portal.³ Because one “dispute” may include a batch of multiple claims that IDR entities must evaluate individually, the underlying claim volume is higher than suggested by the number of portal disputes alone.⁴

² The “Qualifying Payment Amount,” or “QPA” is the median contracted rate for the same or similar service in the same market. *See* 42 U.S.C. § 300gg-111(c)(5)(C)(i)(I).

³ *See* Federal Independent Dispute Resolution Process – Status Update, April 27, 2023. Available at <https://www.cms.gov/files/document/federal-idr-processtatus-update-april-2023.pdf>.

⁴ *See* 42 U.S.C. § 300gg-111(c)(3)(A) (setting forth criteria for when multiple IDR dispute items and services may be considered jointly as

Published CMS data indicate that initiating parties are more commonly physicians or other health care providers and that they prevail in a large majority of adjudicated disputes. As of March 31, 2023, CMS reported that initiating parties prevailed in 71% of the disputes.⁵ A 2025 Congressional Research Service report analyzing 2024 data on the IDR process found that physicians and other providers prevailed in IDR at rates of 80% to 85% in 2023 and 2024, with part of that increase attributable to default decisions.⁶ Those high provider win rates demonstrate that IDR determinations often correct insufficient plan payments, and that IDR-selected amounts now represent a meaningful source of revenue for physicians who can no longer seek payment from patients through balance billing. The increase in default decisions is likely attributable to insurers' new strategy of simply ignoring the IDR process and many awards entirely, in the hope that

part of a single determination by an IDR entity for purposes of encouraging efficiency).

⁵ Federal Independent Dispute Resolution Process – Status Update, April 27, 2023. *Supra* n.3 at p. 2.

⁶ Ryan J. Rosso & Wen W. Shen, Cong. Rsch. Serv., R48738, *No Surprises Act (NSA) Independent Dispute Resolution (IDR) Process Data Analysis for 2024* (2025). Available at <https://www.congress.gov/crs-product/R48738>.

the insurers might be able to misdirect courts into not enforcing the resulting payment decisions.

That payment pathway matters because independent physician practices operate in an increasingly difficult economic environment. In 2025, GAO reported that physician consolidation has increased substantially: at least 47% of physicians were employed by or affiliated with hospital systems in 2024, compared with less than 30% in 2012.⁷ GAO further reported that stakeholders representing physicians stated that “maintaining a private practice has become increasingly difficult, as certain practice expenses have increased faster than revenues,” and that remaining independent practices may face “reduced ability to negotiate contracts and payments with insurers.” *Id.*

Those findings are directly relevant here. If IDR awards cannot be confirmed and enforced, physician practices will face another form of payment uncertainty, and that uncertainty will increase pressure to sell, consolidate, reduce services, or close. The NSA itself demonstrates

⁷ U.S. Gov’t Accountability Off., GAO-25-107450, *Health Care Consolidation: Published Estimates of the Extent and Effects of Physician Consolidation* (2025). Available at <https://www.gao.gov/products/gao-25-107450>.

that Congress was particularly concerned with the NSA's effects on the trend of vertical integration of health facilities and physician practices, by requiring the Secretary of Health and Human Services, in consultation with the Federal Trade Commission and the Attorney General, to "conduct a study on the effects" of the NSA on, among other things, "any patterns of vertical or horizontal integration of health care facilities" and "health care providers." Pub. L. No. 116-260, div. BB, tit. I, § 109(a)(2)(B), 134 Stat. 1182, 2859 (2020). Congress separately required the GAO to issue a report on the impact of the NSA on "access to providers, including in rural and medically underserved communities and health professional shortage areas (as defined in section 332 of the Public Health Service Act), and the extent of provider shortages in such communities and areas." § 109(b)(2)(D), 134 Stat. at 2859.

The ability to convert IDR determinations into enforceable judgments is not ancillary to the statutory scheme enacted by Congress; it is essential to making the substitute payment mechanism work and preventing the negative effects that Congress sought to avoid. When an IDR award is not paid within the statutory period, the cash-flow consequences fall on the physician practice that furnished the service.

Those consequences are especially acute for emergency medicine, anesthesiology, radiology, surgery, and other facility-based specialties that cannot reliably avoid out-of-network encounters, as well as for rural practices with limited ability to negotiate fair contracts. Congress paired the words “shall be binding” with “shall be made ... not later than 30 days” to prevent that precise gap between adjudication and payment. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(I); *id.* § 300gg-111(a)(1)(C)(iv)(III). If courts cannot confirm and enforce awards when plans do not pay, the payment pathway Congress created is substantially impaired, and the risk of practice closures and reduced access to care increases.

B. The text of the NSA confirms Congress’s intent to create an enforcement action in court

The question of whether a statute provides a private enforcement action is one of statutory construction. “The central inquiry remains whether Congress intended to create, either expressly or by implication, a private cause of action.” *Touche Ross & Co. v. Redington*, 442 U.S. 560, 575–76 (1979). “[T]he judicial task is to interpret the statute Congress has passed to determine whether it displays an intent to

create not just a private right but also a private remedy.” *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001).

Rights are most clearly (but not exclusively) indicated by “rights-creating” language “phrased in terms of the persons benefited.” *Gonzaga Univ. v. Doe*, 536 U.S. 273, 284 (2002). When Congress issues a specific command whose effectiveness depends on judicial implementation, a limited right or remedy may be recognized to give the command operative force—and that compliance with this command “may be litigated somewhere.” See *Transamerica Mortg. Advisors, Inc. v. Lewis*, 444 U.S. 11, 18–20, 24 (1979) (*TAMA*) (statutory text providing that contract “shall be void” “necessarily contemplates” judicial rescission remedy to avoid making the command meaningless).

In the NSA, Congress used rights-creating language that imposes a determinate duty, incorporates a judicial review template that presupposes confirmation, and leaves no administrative collection route. Thus, a narrow action to confirm and enforce the resulting obligation is the minimum remedy necessary to give the NSA’s IDR process operative force consistent with Congressional intent that such awards be “binding” on the parties.

1. The NSA uses rights-creating language and imposes determinate duties

Congress declared that the certified IDR determination “shall be binding upon the parties involved” and that “the total plan or coverage payment ... shall be made ... not later than 30 days” after the determination. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(I); *id.* § 300gg-111(a)(1)(C)(iv)(III). Those phrases confer a concrete right on the prevailing physician or other health care provider (payment of the adjudicated amount) and impose a determinate duty on the losing plan (payment by a date certain). Under the standard set forth in *Sandoval* and *Gonzaga*, that is the kind of unambiguous entitlement and obligation that supports judicial enforcement. *See, e.g., Nat’l Ass’n of the Deaf v. Trump*, 486 F. Supp. 3d 45, 53 (D.D.C. 2020) (collecting cases finding that the phrasing “no person” shall “be subject to discrimination” and similar language confers private right of action under *Sandoval*); *BlackRock Allocation Target Shares: Series S. Portfolio v. Wells Fargo Bank, Nat’l Ass’n*, 247 F. Supp. 3d 377, 403 (S.D.N.Y. 2017) (noting a 35-year line of cases holding that Trust Indenture Act provides private right of action because it “imposes specific fiduciary duties, and so necessarily implies corresponding rights

in beneficiaries”); *Landegger v. Cohen*, 5 F. Supp. 3d 1278, 1290 (D. Colo. 2013) (section 15(a)(1) of the Exchange Act creates private right of action because it makes unregistered brokering “unlawful” and Section 29 of the Act provides that contracts made in violation of this chapter “shall be void”).

2. The NSA’s cross-reference to the Federal Arbitration Act presupposes that federal courts could confirm and enforce IDR awards

The NSA limits judicial review to “a case described in any of paragraphs (1) through (4) of section 10(a) of title 9.” 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II). In arbitration practice, 9 U.S.C. § 10(a) (vacatur) sits parallel to § 9 (confirmation), as the two court-facing mechanisms by which an award is either set aside or reduced to judgment. Congress did not need to reprint § 9 to invoke that architecture. By adopting § 10(a) as the exclusive review standard for determining when an award is subject to vacatur, Congress placed IDR within the familiar confirm-or-vacate template signaling courts would perform both functions as needed.

The cross-reference to vacatur would be entirely pointless if courts lacked authority to confirm—there would be no sense in a nonprevailing

party in the IDR process seeking vacatur of an award if that award was not enforceable in the first instance. Congress's decision to incorporate §10(a) vacatur standards presupposes the complementary confirmatory step that enables the template to function.

To hold otherwise would be to ignore the purpose and mechanics of the statutory scheme envisioned and enacted by Congress. Congress could not possibly have intended that a party could be compelled to participate in the remedial scheme it created, but that the result of the remedial scheme could simply be ignored if that party disagreed with the outcome. It is even less plausible that Congress could have intended that federal courts would be involved in *vacating* such awards yet have no role in ensuring that they are enforced. The only plausible reading of Congress's decision to incorporate the FAA's vacatur standards is that Congress intended that the customary legal incidents of a binding arbitration award would follow the issuance of an award under the IDR process—including that the winner can enforce that award in federal court if not paid on time. *See TAMA*, 444 U.S. 11, 19 (“For these reasons we conclude that when Congress declared in § 215 that certain contracts are void, it intended that the customary legal incidents of

voidness would follow, including the availability of a suit for rescission or for an injunction against continued operation of the contract, and for restitution.”).

3. The NSA contains no alternative administrative mechanism to compel payment of IDR awards

Federal cases evaluating whether statutes provide a private enforcement action often find the existence of a parallel administrative mechanism for enforcement—not present here—to be a factor that weighs against private enforcement through a federal court action. *See FS Credit Opportunities Corp. v. Saba Cap. Master Fund, Ltd*, No. 24-345, 608 U.S.____, slip op. at 7 (June 11, 2026) (“Congress’s decision to create a comprehensive agency enforcement scheme supports the conclusion that private parties generally cannot enforce the ICA.”)⁸ In its opinion in *FS Credit* issued this year, the Supreme Court held that the Investment Company Act did not imply a private right of action for contract rescission in part because “the Securities and Exchange Commission bears primary responsibility for ensuring compliance with the ICA. It may investigate and bring enforcement actions in response

⁸ Available at https://www.supremecourt.gov/opinions/25pdf/24-345_i42k.pdf

to violations of ‘any provision of [the ICA] or of any rule, regulation, or order’ issued under the Act. [15 U.S.C.] § 80a–41(a). It may also ‘bring an action in ... court’ for injunctive relief or civil monetary penalties.”

Id. Likewise, in *Sandoval*, the Supreme Court held that “[t]he express provision of one method of enforce[ment] ... suggests that Congress intended to preclude others.” *Sandoval*, 532 U.S. at 290.

Unlike the statutes at issue in *F.S. Credit* and *Sandoval*, the NSA does not include any administrative mechanism to enforce its commands that IDR awards shall be “binding” and that the payments determined pursuant to the IDR process “shall be made” within 30 days. 42 U.S.C. § 300gg-111(c)(6). The NSA only gives the Departments authority to set the IDR process in motion, the authority to compel payment of a final IDR award. The Departments certify IDR entities, establish the federal IDR portal, regulate the initiation and batching of disputes, collect administrative fees, publish information about IDR outcomes, and receive data from certified IDR entities. *See* 42 U.S.C. § 300gg-111(c)(2), (c)(4), (c)(7)–(8). But the statute nowhere authorizes the Departments to enter a money order, garnish plan assets, offset federal payments, impose a lien, or otherwise collect the IDR award for

the prevailing physician. And the United States has already taken the position in an *amicus* brief filed in the Fifth Circuit that HHS lacks authority to enforce these awards. Brief for the United States as Amicus Curiae at 13-14, *Guardian Flight, LLC v. Aetna Life Insurance Co.*, No. 24-10561 (5th Cir. June 12, 2025), ECF No. 32.⁹

The agency's role is administrative and supervisory; the obligation to pay runs between the parties, not between the losing party and any administrative agency. That is not surprising, as the IDR process itself is between physician and payor, not agency and payor.

Courts recognizing enforceability of NSA IDR awards have emphasized this same point. A District of Maryland decision rejected the argument that HHS's civil-penalty authority supplies a comprehensive administrative remedy, noting that those penalties "do not empower agencies to enforce individual IDR awards or to hold health plans and insurers accountable for untimely payments." *PHI Health, LLC v. Optimum Choice, Inc.*, No. 25-cv-2320-ABA, ECF No. 44, at 22 (D. Md. Mar. 27, 2026) (quoting *Guardian Flight LLC v. Aetna*

⁹ Available at https://litigationtracker.law.georgetown.edu/wp-content/uploads/2025/10/Guardian-Flt_2024.06.21._AMICUS-BRIEF-UNITED-STATES.pdf

Life Insurance Co., 789 F. Supp. 3d 214, 229 (D. Conn. 2025)).¹⁰ The court further explained that “[n]othing in the No Surprises Act authorizes HHS (or DOL or Treasury or any state agency for that matter) to order a payor that is in violation of the Act to comply with an IDR determination.” *Id.*

A District of Connecticut decision reached the same conclusion, explaining that the NSA’s civil-penalty procedure “does not compel the health insurance company to pay the IDR award to the provider.” *Agag v. Cigna Health & Life Ins. Co.*, No. 3:25-CV-00498 (SRU), ECF No. 43, at 24 (D. Conn. Apr. 15, 2026).¹¹ The *Agag* court summarized this practical point directly: “an administrative ‘remedy’ that does not lead to the provider being paid is not a remedy at all.” *Id.* at 26.

The omission of an administrative enforcement mechanism is especially significant here because the text of the NSA demonstrates that Congress knew how to give the Departments compliance and audit

¹⁰ Available at

[https://www2.mdd.uscourts.gov/Opinions/Opinions/2026-03-27%20PHI%20Health%20denying%20MTD%20\(25-2320\).pdf](https://www2.mdd.uscourts.gov/Opinions/Opinions/2026-03-27%20PHI%20Health%20denying%20MTD%20(25-2320).pdf).

¹¹ Available at https://litigationtracker.law.georgetown.edu/wp-content/uploads/2026/05/Agag_2026.04.15_ORDER-ON-MOTION-TO-DISMISS.pdf.

authority when it wanted them to police payment-related requirements. In the same section of the NSA, Congress created an express “[a]udit process” for QPAs. *Id.* § 300gg-111(a)(2)(A). That provision directs the Secretary, in consultation with the Secretaries of Labor and Treasury, to establish by rule “a process ... under which group health plans and health insurance issuers ... are audited by the Secretary or applicable State authority” to ensure two things: first, that plans and issuers are “in compliance with the requirement of applying a [QPA],” and second, that the QPA “satisfies the definition” set forth in the statute. *Id.* § 300gg-111(a)(2)(A)(i)(I)–(II). Congress further provided that the Secretary “shall conduct audits” of a sample of plans and issuers and “may audit any” plan or issuer if the Secretary receives “any complaint or other information” involving compliance with the QPA requirements. *Id.* § 300gg-111(a)(2)(A)(ii)(I)–(II). Congress also directed the Departments to establish through rulemaking a QPA methodology, specify the information plans must share when making QPA determinations, and create “a process to receive complaints” about QPA violations. *Id.* § 300gg-111(a)(2)(B)(i)–(iv).

There are no comparable provisions setting forth administrative oversight and enforcement over the payment of IDR awards.

The contrast between these provisions is telling. For the QPA, Congress expressly created an administrative compliance apparatus: rulemaking, audits, complaint intake, and annual reports to Congress. *Id.* § 300gg-111(a)(2)(A)–(B). For final IDR awards, however, Congress did not create an agency complaint process for unpaid IDR awards. It did not authorize HHS, Labor, or Treasury to compel payment of the award. Instead, Congress made the award “binding,” required payment within 30 days, and limited judicial review to the vacatur grounds in FAA § 10(a). *Id.* § 300gg-111(c)(5)(E)(i), (c)(6). That structure is the structure of arbitration between private parties, not agency enforcement action. The agencies set the IDR process in motion by adopting rules for neutrals and then collect information on the use of that process and on outcomes. The awards bind the *parties* without triggering any administrative enforcement action.

Only courts can supply the familiar enforce-or-vacate mechanism if a losing party refuses to comply.

That reading is reinforced by *TAMA* and *FS Credit*. In *TAMA*, the Supreme Court recognized a limited private remedy because the statutory command that certain contracts were void “necessarily contemplate[d]” that the issue could be litigated in court. *Transamerica Mortg. Advisors, Inc. v. Lewis*, 444 U.S. at 18–19. In *FS Credit*, the Court refused to imply a private remedy where the statutory text no longer contained the operative “shall be void” language and where Congress had created a comprehensive SEC-centered enforcement scheme. *FS Credit Opportunities Corp. v. Saba Cap. Master Fund, Ltd.*, No. 24-345, 608 U.S. ___, slip op. at 3–10 (June 11, 2026). The NSA is far closer to the statute at issue in *TAMA* than to the one at issue in *FS Credit*.

Here, Congress supplied a binding private adjudication, a specific payment deadline, and a judicial-review provision modeled on the FAA, but no agency mechanism to collect the award. A limited action to confirm and enforce the IDR determination is therefore not an extra-statutory remedy that would be layered on top of an agency enforcement scheme. It is the minimum mechanism necessary to make

the statute's binding-award and 30-day-payment commands operative, and the mechanism that Congress intended when it enacted the NSA.

4. The NSA's "specified state law" structure confirms Congress' intent to supply a remedy

The lack of an administrative enforcement mechanism is not the only indication that Congress intended IDR awards to be judicially enforceable. Congress expressly deferred to "specified State law" that not only "provides for a method for determining the total amount payable" for out-of-network items and services, but also "provides for a process to determine such payment." 42 U.S.C. § 300gg-111(a)(3)(K)(i). Thus, in jurisdictions with "specified State law" providing for determination of a payment amount for out-of-network services (and therefore a method to enforce such determinations), physicians can use the State's process and remedies rather than the IDR process. Where "specified State law" does not provide such a method and process, Congress supplied a counterpart: the "out-of-network rate" is "the amount of [the IDR] determination." *Id.* § 300gg-111(a)(3)(K)(ii). Read together, these subsections reflect Congress's intent that physicians not covered by a "specified State law" would be in parity with those already protected by such laws.

In other words, Congress sought to extend the protections already enjoyed by out-of-network physicians in some states to providers in states who did not yet enjoy such protection, and to ensure that physicians would be paid a fair amount regardless of the state where they treat patients. Congress respected state enforcement where it exists and established a federal process (IDR) where it does not; this structure indicates Congress meant to fill enforcement gaps in states without a qualifying regime, not to perpetuate the lack of a remedy with a federal procedure that produces an unenforceable paper decision that does not achieve parity with state laws that do supply such enforcement mechanisms.

Reading the NSA in the absence of the implied enforcement action would defeat Congress's purpose of extending parity to all out-of-network physicians regardless of whether any particular state provides them with a remedy. The IDR process was therefore enacted against Congress's background understanding that, in the absence of the NSA, providers in states with no "specified State law" had no recourse against out-of-network payors without balance-billing, and was specifically intended to remedy that problem in states that had not yet done it

themselves, without displacing the solutions already reached in states where this problem had already been solved.

5. Legislative history corroborates the textual indications of Congress’s intent to supply providers with a binding and enforceable payment right

The contemporaneous committee reports align with the textual indications of Congress’s intent to provide a private right of action to enforce IDR awards. The House report explains that Congress rejected a national benchmark rate and instead provided that “either the provider or plan may elect to utilize the *binding* IDR process to determine a fair payment amount.” H.R. Rep. No. 116-615, pt. I, at 48 (emphasis added). *See also id.* at 46–57 (“A common approach is to use ‘baseball-style’ arbitration, under which each side submits a price, and the arbitrator chooses one, with both sides *bound* by the decision.” (Emphasis added)).

The House Subcommittee’s discussion is replete with witness testimony and stakeholder statements on the question of whether the NSA should include a benchmark out-of-network payment rate or whether such rates should be determined by arbitration, but all the witnesses and stakeholders assumed that an arbitration process would

bind the parties.¹² And the Departments' implementation materials, while not controlling on congressional intent, consistently read the statute to mean that IDR determinations are "binding upon the parties," "must be paid directly to the provider, facility, or provider of air ambulance services not later than 30 calendar days after the determination," and are not "subject to judicial review" except as provided under the FAA. Requirements Related to Surprise Billing; Part II, 86 Fed. Reg. 55,980, 55,995–56,105 (Oct. 7, 2021).

In short, every indicia of congressional intent on the question of whether IDR awards are enforceable or merely advisory points in the same direction as the text: Congress intended that these awards would be binding, and therefore that they would be enforceable in federal court. There is simply no evidence that any stakeholders, congressmembers, or federal administrative agencies ever took the position or expressed an understanding that IDR awards would be merely advisory before, during, or after the debate over the NSA.

¹² See *No More Surprises: Protecting Patients from Surprise Medical Bills: Hearing Before the Subcomm. on Health of the H. Comm. on Energy & Com.*, 116th Cong. (2019) (preliminary unedited transcript). Available at <https://www.congress.gov/116/meeting/house/109626/documents/HHRG-116-IF14-Transcript-20190612.pdf>.

6. Refusal to recognize a right of action to enforce IDR awards would nullify the system enacted by Congress

When Congress issues a binding command, the Supreme Court has recognized the existence of the private court remedy necessary to make that command operative.

In *TAMA*, Congress’s declaration that advisory contracts “shall be void” “by its terms necessarily contemplates that the issue of voidness ... may be litigated somewhere,” and in response to an argument that voidness could be raised defensively even without a private right of action, the Court stated that “the legal consequences of voidness are typically not so limited.” 444 U.S. at 18–19. The Court therefore recognized rescission and restitution as the “specific and limited relief” the text required. *Id.* at 20, 24. The animating principle is to avoid practical meaninglessness; a statutory duty “does not evaporate for want of a formulated sanction.” *Cf. Merrill Lynch, Pierce, Fenner & Smith Inc. v. Curran*, 456 U.S. 353, 376 n.54 (1982) (collecting the historical maxim that “[a] general liability created by statute without a remedy may be enforced by an appropriate common-law action”); *id.* at 376–77 (quotation discussing courts’ traditional remedial powers).

The NSA presents the same structure that justified a limited remedy in *TAMA* and that no case since has found incompatible with judicial enforcement. Congress conferred a concrete entitlement and a determinate duty—binding awards and 30-day payment deadline—imported the FAA’s review standard that presupposes confirmation, created a reporting regime to monitor outcomes and timing, and established no administrative collection machinery.

Recognizing a narrow confirmation action—subject to § 10(a)’s vacatur limits—supplies the “specific and limited relief” the text and structure require. *TAMA*, 444 U.S. at 18–20, 24. This would not be untethered from the statute’s text. Rather, it follows from Congress’s specific textual choices: binding IDR determinations, a mandatory 30-day payment deadline, the intent to fill in gaps left where no “specified State law” operates, and judicial review limited to the FAA’s vacatur grounds.

Conclusion

The NSA removes patients from out-of-network payment disputes and replaces balance billing with a neutral, binding adjudication method that Congress requires plans to honor within 30 days. The statute's rights-creating language, the FAA cross-reference, the absence of any administrative enforcement, the state-law parity structure, and the legislative history together demonstrate congressional intent that IDR awards be judicially cognizable and enforceable. An alternative holding would not only contradict congressional intent, but also would leave physicians across the country without a remedy, and permit health plans to pay whatever they want, including nothing at all, for out-of-network care. A limited federal enforcement action, with review confined to the limited circumstances set forth in FAA § 10(a), is the minimum remedy necessary to give the statute operative effect and to preserve the two-sided bargain Congress enacted.

Respectfully,

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Dated: September 16, 2026

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Certificate of service

I hereby certify that on September 16, 2026, I caused the foregoing [PROPOSED] BRIEF OF AMICI CURIAE AMERICAN MEDICAL ASSOCIATION AND ILLINOIS STATE MEDICAL SOCIETY IN SUPPORT OF PLAINTIFFS—APPELLANTS (SEEKING REVERSAL) to be filed electronically with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: September 16, 2026

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